

# **Title 10 MARYLAND DEPARTMENT OF HEALTH**

## **Subtitle 29 BOARD OF MORTICIANS AND FUNERAL DIRECTORS**

### **Chapter 11 Complaint Procedures**

#### **10.29.11.00 Complaint Procedures**

Authority: Health Occupations Article, §7-205(a), Annotated Code of Maryland

#### **10.29.11.01 Scope.**

This chapter applies to the handling of all complaints against licensees of the State Board of Morticians and Funeral Directors.

#### **10.29.11.02 Definitions.**

- A. In this chapter, the following terms have the meanings indicated.
- B. Terms Defined.
  1. "Act" means Health Occupations Article, Title 7, Annotated Code of Maryland.
  2. "Board" means the Board of Morticians and Funeral Directors.
  3. "Cease and desist letter" means a letter commanding an individual to stop engaging in certain prohibited activities under the Act.
  4. "Committee" means the Complaint Committee of the Board, which includes at least one mortician member of the Board and at least one consumer member of the Board, and which is assisted by Board counsel provided by the Attorney General's Office and Board administrative personnel.
  5. "Complaint" means a report of a potential violation during the performance of mortuary services against an individual licensed by the Board.
  6. "Complainant" means an individual who files a complaint with the Board.
  7. "Confidential" means that neither the complaint nor resolution of it by the Board may be released to the public, including to the complainant, pursuant to General Provisions Article, §4-333, Annotated Code of Maryland.
  8. "Consent order" means a written agreement reached by the licensee and the Board as a result of a prehearing conference which sets forth the terms and conditions regarding the licensee's ability or inability to practice and is subject to release to the public, pursuant to General Provisions Article, §4-333, Annotated Code of Maryland.
  9. "Disposition agreement" means a confidential agreement entered into between the Board and the licensee whereby the Board agrees to resolve the matter after the filing of charges in return for the licensee's agreeing to meet certain specified terms and conditions which remain a permanent part of the licensee's record and can be used in considering sanction should further disciplinary action be required.
  10. "Educational letter" means a dismissal notice which specifically sets forth in an instructive manner the areas of the licensee's practice which require improvement and which, when applicable, includes a warning that any further complaints for the same or similar activities may result in disciplinary charges under the Act.
  11. "Informal meeting" means a voluntary meeting of the Board and the licensee, either on the licensee's own initiative or on the Board's initiative, following notice to the licensee regarding the precise purpose of the meeting in the context of an ongoing investigation or inquiry.
  12. "Jurisdiction" means within the Board's authority as set forth in the Act.
  13. "Letter of admonishment" means a letter which sets forth that the:

- a. Board has probable cause to charge the licensee with a violation of a specific provision of the Board's Act;
  - b. Licensee is admonished and ordered to cease and desist from all further activities in violation of its Act; and
  - c. Letter will become part of the licensee's permanent record with the Board but will be treated as part of the confidential record maintained by the Board on the licensee and can be considered in determining sanctions for any subsequent violation of the Act.
14. "Letter of dismissal" means a letter from the Board advising the licensee that:
- a. The investigation into the allegations raised has been closed;
  - b. Violations were not found; and
  - c. The information obtained during the course of the investigation will be treated as a confidential record of the licensee maintained by the Board.
15. "Letter of surrender" means an agreement between the Board and licensee whereby the Board specifies the terms for the complete and unequivocal surrender of the licensee's license and right to practice mortuary science.
16. "Licensee" means an individual licensed by the Board of Morticians and Funeral Directors against whom a complaint has been filed.
17. "Mortuary services" means any service provided to a decedent or their family that requires any license issued by the Board.

#### **10.29.11.03 Filing of Complaint.**

- A. A complaint may come to the Board by any means from the public or a Board member.
- B. A complaint received by the Board shall be recorded on a complaint log.
- C. When the complaint to the Board against a licensee is filed, the complaint will be completed on a form devised by the Board and according to the instructions provided.
- D. In an emergency situation the Board may act upon a complaint received by telephone if that complaint is followed up in writing.
- E. The Board may also act upon a complaint signed by a Board member if the complaint is recorded on the log and the Board member refrains from further participation in the discussion or vote in the matter.

#### **10.29.11.04 Disposition of Complaint by Complaint Committee.**

- A. Upon receipt of a complaint, the administrative personnel shall present the complaint to the Complaint Committee of the Board.
- B. The Committee shall review the complaint and make a determination as to whether the complaint falls within the Board's jurisdiction.
- C. If the Committee determines that the complaint does not fall within the Board's jurisdiction, the determination shall be reported to the Board at its next regularly scheduled Board meeting. If the Board concurs with the recommendation of the Committee, the Board shall vote to close the complaint with no Board action.
- D. If the Board determines that the complaint falls under the jurisdiction of another agency, the Board staff shall refer the complaint to the appropriate agency.
- E. If the Committee determines that the complaint would fall within the Board's jurisdiction, the Board shall vote to open the complaint for investigation.
- F. The Committee shall review the licensee's response or report and make a recommendation to the Board for disposition of the case. The Committee may request that:
  - 1. Supplemental information be obtained;
  - 2. A supplemental investigation be conducted; or
  - 3. Clarification of the responses or report be received.

- G. The complaint committee shall, by a majority of the members present at a regularly scheduled Committee meeting, make a recommendation to the Board based on the following actions:
1. That the Board take informal action by issuing one of the following:
    - a. Cease and desist letter;
    - b. Educational letter;
    - c. Informal meeting;
    - d. Letter of admonishment; or
    - e. Letter of dismissal; or
  2. That the Board take formal action by voting to charge the licensee with a violation of the Act and subsequently making a referral of the case to the Attorney General's Office for prosecution.

#### **10.29.11.05 Board Action on Complaints.**

- A. The Board, upon receipt of the Committee's recommendations, shall take one of the following actions:
1. Accept the Committee's recommendations;
  2. Accept the Committee's recommendation with modifications; or
  3. Reject the Committee's recommendations with instructions.
- B. If the Board refers a case to the Attorney General's Office for prosecution, a liaison shall be assigned to assist the prosecutor with the preparation of the charges.
- C. Upon receipt of the charges prepared by the prosecutor, the Board shall vote to ratify the charge document.
- D. After a prehearing conference or a hearing on the charges, the Board may vote to:
1. Discuss the complaint or any sections of the charges;
  2. Find no violation;
  3. Find a violation and issue a disposition agreement;
  4. Issue a cease and desist order;
  5. Issue a reprimand;
  6. Place a licensee on probation, with or without conditions;
  7. Charge a monetary penalty;
  8. Issue a suspension of the licensee;
  9. Revoke a license; or
  10. Combine any of the above.
- E. In addition, following the Board's vote, the Board shall issue a written document regarding the action taken. All of these documents will be sent to the licensee. The Board shall notify the complainant of the resolution of the complaint, as permitted by General Provisions Article, §4-333, Annotated Code of Maryland.

#### **10.29.11.06 Confidentiality.**

- A. A disposition agreement remains confidential and may only be released to the public if the licensee is found guilty of a violation of a provision of the agreement or subsequent violation of the Act, after a hearing, pursuant to Health Occupations Article, §7-319, Annotated Code of Maryland.
- B. An educational letter and a letter of admonishment is treated as a confidential record maintained by the Board on the licensee.

#### **10.29.11.9999 Administrative History**

Effective date: July 15, 1996 (23:14 Md. R. 1009)

Regulation .01 amended as an emergency provision effective November 5, 2007 (34:24 Md. R. 2154); amended permanently effective February 25, 2008 (35:4 Md. R. 514)

Regulation .01 amended effective July 4, 2016 (43:13 Md. R. 713)

Regulation .02B amended as an emergency provision effective November 5, 2007 (34:24 Md. R. 2154); amended permanently effective February 25, 2008 (35:4 Md. R. 514)

Regulation .02B amended effective July 4, 2016 (43:13 Md. R. 713)

Regulation .03 amended effective July 4, 2016 (43:13 Md. R. 713)

Regulation .04 amended effective July 4, 2016 (43:13 Md. R. 713)

Regulation .05E amended effective July 4, 2016 (43:13 Md. R. 713)

Regulation .06B amended effective July 4, 2016 (43:13 Md. R. 713)